

TITLE 3, DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3700(c) of the regulations in Title 3 of the California Code of Regulations pertaining to Oak Mortality Disease Control as an emergency action on March 7, 2006. The Department proposes to continue the regulation as amended and submit a Certificate of Compliance for this action to the Office of Administrative Law no later than July 5, 2006.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department contact no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture may certify that there was compliance with the provisions of Section 11346.1 of the Government Code within 120 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before June 12, 2006.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code, Section 5322).

The emergency amendment of Section 3700(c), Oak Mortality Disease Control, established the following as regulated under the articles and commodities covered as "associated hosts:" *Abies magnifica* (red fir), *Acer davidii* (striped bark maple), *Ardisia japonica* (ardisia), *Euonymus kiautschovicus* (spreading euonymus), *Gaultheria shallon* (salal, Oregon wintergreen), *Hamamelis x intermedia* [(*H. mollis* & *H. japonica*) (hybrid witchhazel)], *Leucothoe axillaries* (fetter-bush, dog hobble), *Magnolia grandiflora* (Southern magnolia), *Michelia maudiae* (Michelia), *Michelia wilsonii* (Michelia), *Osmanthus decorus* [(=*Phillyrea decora*; =*P. vilmoriniana*) (Osmanthus)], *Prunus lusitanica* (Portuguese laurel cherry) and *Rosa rugosa* (rugosa rose).

Koch's postulates were completed for the following three associated hosts: *Adiantum aleuticum* (Western maidenhair fern), *Adiantum jordanii* (California maidenhair fern) and *Rhamnus californica* (California coffeeberry). As a result, these plants were deleted from the United States Department of Agriculture's (USDA) list entitled "Plants Associated with *Phytophthora ramorum*" and added to their list, "Proven Hosts Regulated for *Phytophthora ramorum*." The scientific names for two proven hosts were also updated: *Frangula californica* [(=*Rhamnus californica*) (California coffeeberry)] and *Frangula purshiana*

[(*Rhamnus purshiana*) (cascara)]. Therefore, to ensure harmonization with the federal order governing interstate movement, equivalent changes were made by this emergency amendment to Section 3700(c) that governs intrastate movement.

The USDA's federal order refined six of its entries on the proven host list to clarify what it intends to be regulated. To ensure harmonization with the federal order, these changes were made to Section 3700(c), as follows:

- 1) *Pieris formosa* (Himalaya pieris) has been changed to "*Pieris formosa* and *P. formosa* x *P. japonica* and all hybrids of *P. formosa* (Himalaya andromeda);"
- 2) *Quercus parvula* var. *shrevei* has been modified by adding "and all nursery grown *Q. parvula*;"
- 3) *Viburnum plicatum* var. *tomentosum* (doublefile) has been changed to "*Viburnum plicatum* (doublefile viburnum);"
- 4) *Pseudotsuga menziesii* var. *menziesii* has been modified by adding "and all nursery grown *P. menziesii*;"
- 5) Brouwer's beauty andromeda (*Pieris floribunda* x *japonica*) has been changed to "mountain andromeda (*Pieris floribunda* and *P. floribunda* x *P. japonica* and all hybrids of *P. floribunda*);"
- 6) Forest flame andromeda (*Pieris formosa* x *japonica*) has been deleted from Section 3700(c);
- 7) Variegated and flaming silver andromeda (*Pieris japonica*) has been changed to "Japanese pieris (*Pieris japonica* and all hybrids of *P. japonica*);" and,
- 8) The deletion of *Pieris formosa* var. *forrestii* (Chinese pieris) and *Pieris formosa* var. *forrestii* x *Pieris japonica* (pieris) from Section 3700(c).

Finally, several changes were made that clarify the common names of some of the hosts or potential carriers of the pathogen regulated under Section 3700(c) to ensure those affected in California understand what is regulated. These changes include:

- 1) The addition of "Scotch" to "heather" after *Calluna vulgaris*;
- 2) The deletion of "a" and addition of "California" to "honeysuckle" after *Lonicera hispidula*;
- 3) The addition of "California" to "black oak" after *Quercus kelloggii*; and,
- 4) The deletion of "arrowwood" and the addition of "Bodnant viburnum" after *Viburnum x bodnantense*.

The effect of this emergency amendment to the regulation was to provide authority for the State to regulate the movement of additional associated hosts and potential carriers of the disease from the regulated area in order to prevent artificial spread of the pest to non-infested areas within California and to correct typographical errors in the text. There is no existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that the amendment of Section 3700(c) does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under regulation has a duty to enforce Section 3700. No reimbursement is required for Section 3700 under Section 17561 of the Government Code because the agricultural commissioners of the affected counties requested the change in the regulation.

The Department also has determined that the amended regulation will involve no additional costs or savings to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The cost impact of amending the regulation on a representative private person or business is not expected to be significantly adverse. The agency is not aware of any new cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed amendment to the regulation would not (1) create or eliminate jobs within California, (2) create new businesses or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which

the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY

The Department amended Section 3700(c) pursuant to the authority vested by Sections 407, 5321, and 5322 of the Food and Agricultural Code of California.

REFERENCE

The Department amended Section 3700(c) to implement, interpret and make specific Sections 24.5, 5321, and 5322, Food and Agricultural Code; Sections 11425.50 and 11440.10, Government Code; and Section 1084 *et seq.*, Code of Civil Procedure.

EFFECT ON SMALL BUSINESSES

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted on its Internet website (www.cdfa.ca.gov/plant/index.html) the information regarding this proposed regulatory action. Select "Proposed Changes in Regulations for Plant Health and Pest Prevention Services" and then section number(s).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

DEPARTMENT OF FOOD AND AGRICULTURE

Date

Deputy Secretary